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FILED

2010 APR -6 PM 3:17

CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Attorneys for Plaintiff, ELSA MANULID

BY  DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ELSA MANULID,

Plaintiff,

vs.

SYCUAN CASINO & RESORT, an
entity; SYCUAN BAND OF THE
KUMEYAAY NATION, an entity; DR.
DONALD WEISS; an individual;
and DOES 1-30, inclusive.

Defendants.

Case No. 10 CV 0721 WQH CAB
COMPLAINT FOR
(1) BREACH OF CONTRACT;
(2) CALIFORNIA TORT CAUSE OF
ACTION FOR WRONGFUL
ADVERSE ACTION AND
TERMINATION IN VIOLATION
OF PUBLIC POLICIES;
(3) VIOLATION OF THE FEDERAL
FAMILY MEDICAL LEAVE ACT;
AND
(4) BATTERY.
JURY TRIAL DEMANDED

Plaintiff complains and alleges as follows:

JURISDICTION

1. This court has jurisdiction under 29 C.F.R. §
825.400(a)(2) and because the events or omissions giving rise to
Plaintiff's claims occurred in this judicial district, thus venue
is proper here pursuant to 28 U.S.C. § 1391 (b)(2).

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VENUE

2. Venue is proper in the Southern District of California under 42 U.S.C. §2000e - 5(f) and as the judicial district in which the unlawful employment practices occurred and in which relevant employment records are maintained and administered.

PARTIES

3. Plaintiff ELSA MANULID ("Plaintiff") is, and at all relevant times was, a resident of the State of California, County of San Diego.

4. PLAINTIFF is informed and believes and thereby alleges that DEFENDANT SYCUAN CASINO & RESORT, ("SYCUAN") is, and at all relevant times was, an entity of type unknown organized and existing under and by virtue of the laws of a state unknown, with a principal place of business in the State of California, County of San Diego.

5. PLAINTIFF is informed and believes and thereby alleges that DEFENDANT SYCUAN BAND OF THE KUMEYAAY NATION (hereinafter "SYCUAN") is, and at all relevant times was, an entity of type unknown organized and existing under and by virtue of the laws of a state unknown, with a principal place of business in the State of California, County of San Diego.

6. The entity defendants identified above are collectively referred to herein as "SYCUAN."

7. PLAINTIFF is informed and believes and thereby alleges that DEFENDANT DR. DONALD WEISS ("WEISS") is, and at all relevant times was, a resident of the State of California, County of San Diego.

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1 8. The true names and capacities of the Defendants named
2 herein as DOES 1 through 30, inclusive, whether individual,
3 corporate, associate, or otherwise, are unknown to Plaintiff who
4 therefore sues such Defendants by fictitious names pursuant to
5 Code of Civil Procedure §474. Plaintiff is informed and believes
6 that the DOE Defendants are California residents. Plaintiff will
7 amend this Complaint to show such true names and capacities when
8 they have been determined.

9 9. Plaintiff is informed and believes and on that basis
10 alleges that each of the Defendants herein was at all relevant
11 times the agent, employee or representative of the remaining
12 Defendants and was acting at least in part within the scope of
13 such relationship, although as to DR. DONALD WEISS, at least
14 partly outside of the scope of such relationship also.

15 FACTS COMMON TO ALL CLAIMS

16 10. PLAINTIFF worked for SYCUAN for eight (8) years as a
17 cashier. On or about April 6, 2008, as PLAINTIFF was sitting
18 down her desk chair rolled back and she hit the back of her head
19 on an open drawer.

20 11. Despite being in an incredible amount of pain,
21 PLAINTIFF went to work the next day on April 7, 2008. Shortly
22 after PLAINTIFF got to work, PLAINTIFF was told to go home.
23 SYCUAN'S policy violations are tracked on a point based system.
24 An employee who earns 15 points will be terminated. PLAINTIFF
25 was given 2 points for leaving early, even though her supervisor
26 had told her to leave.

27 12. On or about April 8, 2008, PLAINTIFF visited SYCUAN'S
28 Medical/Dental Center for her injury and met with WEISS. During

1 this visit, PLAINTIFF relayed the fact that she had injured her
2 head and neck. Much to her surprise, WEISS placed his finger in
3 PLAINTIFF'S rectum during her medical exam and then he
4 immediately left the room.

5 13. After waiting for awhile in the room, PLAINTIFF left
6 the exam room and found a medical assistant. When PLAINTIFF
7 asked the assistant why she was given a rectal exam, the
8 assistant claimed that WEISS was confused about the nature of her
9 injury and that he had left the office. Later that same week,
10 PLAINTIFF wrote a letter to Human Resources informing them of how
11 she was violated during her doctor's visit.

12 14. PLAINTIFF went on medical leave starting on April 8,
13 2008. On May 8, 2008, PLAINTIFF returned to work even though
14 PLAINTIFF continued to suffer from depression and heart
15 palpitations from the trauma of her doctor's visit. In June of
16 2008, PLAINTIFF called in sick on four different occasions
17 because of her injury and her depression. Despite the fact that
18 she called in sick with excused absences, PLAINTIFF accrued eight
19 points towards being terminated.

20 15. It was not until May 15, 2008, about six weeks after
21 her doctor's visit, that PLAINTIFF received a response to the
22 letter that she sent to Human Resources completely dismissing her
23 claims.

24 16. By October of 2008, PLAINTIFF had fourteen (14) points
25 accrued against her, even though these absences were excused due
26 to her injury and depression. On or about October 9, 2008, to
27 October 11, 2008, PLAINTIFF called in sick because she was
28 suffering from heart palpitations. On or about October 15, 2008,

1 PLAINTIFF returned to work with a doctor's note for her absences.

2 17. At about 5:00 p.m. that same day, PLAINTIFF was
3 terminated by the head of her department, for, she was told,
4 exceeding the allowable number of points. This is a termination
5 in direct violation of PLAINTIFF'S medical leave rights.

6 18. PLAINTIFF continues to suffer from heart palpitations
7 and depression as a result of her doctor's visit.

8 FIRST CLAIM

9 (Breach of Contract Against SYCUAN;
10 and Does 1-5 and 6-15, inclusive)

11 19. PLAINTIFF hereby realleges and incorporates by
12 reference herein each and every preceding paragraph of this
13 complaint.

14 20. PLAINTIFF was employed by SYCUAN continuously for eight
15 (8) years. During the entire course of PLAINTIFF'S employment,
16 there existed an implied in fact employment contract between
17 PLAINTIFF and Defendants which included, but not limited to, the
18 following terms and conditions:

19 a. PLAINTIFF would be able to continue her employment with
20 Defendants indefinitely so long as she carried out her duties in
21 a proper and competent manner;

22 b. PLAINTIFF would not be terminated nor would PLAINTIFF'S
23 job functions be reassigned for other than good, just, and
24 sufficient cause with notice thereof; and

25 c. Defendants would not unlawfully discriminate against
26 PLAINTIFF or adversely treat PLAINTIFF based upon unlawful
27 criteria.

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1 21. This total employment contract was evidenced by various
2 representations to PLAINTIFF by Defendants' agents and employees,
3 and the parties' entire course of conduct.

4 22. PLAINTIFF'S reliance on, belief in, and acceptance in
5 good faith of, all of the assurances, promises and
6 representations led PLAINTIFF throughout her employment with
7 Defendants to reasonably believe that her employment was secure
8 and that there existed a contract of continuous employment with
9 Defendants. As independent consideration for this contract of
10 continuing employment, as evidence of PLAINTIFF'S reliance
11 thereon, in addition to performing her regular duties as an
12 employee of Defendants, PLAINTIFF refrained from seeking any
13 other employment.

14 23. PLAINTIFF'S lengthy period of service also led her to
15 believe reasonably, that PLAINTIFF could only be terminated for
16 good, just, and sufficient cause.

17 24. PLAINTIFF undertook and continued employment and duly
18 performed all conditions of the contract to be performed by her.
19 PLAINTIFF has at all times been ready, willing and able to
20 perform and has offered to perform all the conditions of this
21 contract to be performed by her.

22 25. Despite the representations made to PLAINTIFF and the
23 reliance she placed on them, Defendants failed to carry out their
24 responsibilities under the terms of the employment contract by
25 wrongfully terminating PLAINTIFF, despite satisfactory job
26 performance.

27 26. As a proximate result of Defendants' breach of contract
28 against PLAINTIFF, PLAINTIFF has suffered and continues to suffer

substantial losses in earnings, reimbursement for expenses incurred by PLAINTIFF but not paid to PLAINTIFF, bonuses earned and due PLAINTIFF but not paid to PLAINTIFF, deferred compensation, and other employment benefits all to her damage in an amount according to proof.

SECOND CLAIM

(A California Tort Cause of Action for Wrongful Adverse Action and Termination in Violation of Public Policies Against SYCUAN, and DOES 1-5 and 10-20, Inclusive)

27. PLAINTIFF hereby realleges and incorporates by reference each and every preceding paragraph of this complaint.

28. Under California law it is unlawful to adversely treat or terminate an employee on grounds that violate a stated public policy.

29. There is a well-recognized public policy under the California Fair Employment and Housing Act that prevents employers from adversely treating or terminating an employee for having a disability, California Government Code § 12900 et seq.

30. There is a well-recognized public policy under the California Family Rights Act that prevents employers from adversely treating or terminating employees for taking leave or planning to take leave to treat a substantial illness, California Government Code § 12945.2 et seq.

31. There is a well-recognized public policy under the Federal Family Medical Leave Act that prevents employers from adversely treating or terminating an employee for taking leave or planning to take leave to treat a substantial illness, 29 USC § 2601 et seq.

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32. DEFENDANTS, individually and through their officers, partners, agents, and/or employees acting within the scope of their employment, adversely treated and discharged PLAINTIFF because of her use of medical leave and because of her disabilities. The termination of PLAINTIFF was committed by Defendants in direct violation of the fundamental public policies embodied in California's Fair Employment and Housing Act, Americans with Disabilities Act, California's Family Rights Act, and the Federal Family Medical Leave Act.

33. As a proximate result of DEFENDANTS' wrongful acts against PLAINTIFF, PLAINTIFF has suffered and continues to suffer substantial losses in earnings, bonuses, deferred compensation and other employment benefits. PLAINTIFF has suffered and continues to suffer embarrassment, humiliation and mental anguish all to her damage in an amount according to proof.

34. DEFENDANTS committed the acts alleged herein maliciously, fraudulently and oppressively, with the wrongful intention of injuring PLAINTIFF, from an improper and evil motive amounting to malice, and in conscious disregard of PLAINTIFF'S rights. PLAINTIFF is thus entitled to recover punitive damages from Defendants in an amount according to proof.

WHEREFORE, PLAINTIFF requests relief as hereinafter provided.

THIRD CLAIM

(Violation of the Federal Family Medical Leave Act Against Defendant SYCUAN and DOES 15-25, Inclusive)

35. Plaintiff hereby realleges and incorporates by reference each and every preceding paragraph of this complaint.

///

1 36. Plaintiff was at all material times an employee covered
2 by the Family Medical Leave Act (FMLA) requiring employers to
3 grant leave time to employees for the reason of the employee's or
4 the employee's family members' serious health condition.

5 37. Defendants are, and at all material times were,
6 employers within the meaning of the FMLA. Under the FMLA, it is,
7 and was, unlawful for Defendants to discriminate or retaliate
8 against Plaintiff for taking leave for the reason of Plaintiff's
9 serious health condition or to interfere with the use of that
10 leave.

11 38. Defendants violated the FMLA by willfully
12 discriminating against Plaintiff and retaliating against
13 Plaintiff for taking leave under the FMLA in the manner described
14 above and by interfering with her use of such leave.

15 39. As a proximate result of Defendants' violation of
16 Plaintiff's rights as alleged herein, Plaintiff has suffered and
17 continues to suffer substantial losses including lost earnings,
18 bonuses, deferred compensation and other employment benefits, and
19 has suffered and continues to suffer embarrassment, humiliation
20 and mental anguish all to her damage in an amount according to
21 proof.

22 40. Defendants' discriminatory acts against Plaintiff,
23 which violated the FMLA, were wilful, and an award of liquidated
24 damages in an amount equal to the award of monetary damages due
25 to Plaintiff from Defendants is appropriate in this case pursuant
26 to 29 U.S.C. § 2617.

27 41. As a result of Defendants' violation of the FMLA as
28 alleged herein, Plaintiff is entitled to reasonable attorneys'

1 fees and costs of said suit as provided by the FMLA.

2 WHEREFORE, Plaintiff requests relief as hereinafter
3 provided.

4 FOURTH CLAIM

5 (Battery, Against DEFENDANTS SYCUAN; WEISS;
6 and DOES 1-5 and 20-30, inclusive)

7 42. PLAINTIFF hereby realleges and incorporates by
8 reference herein each and every preceding paragraph of this
9 complaint.

10 43. By each of the acts alleged in this complaint,
11 DEFENDANT WEISS touched PLAINTIFF with the intent to cause a
12 harmful or offensive contact.

13 44. PLAINTIFF did not give her willing, voluntary, or
14 informed consent to be touched.

15 45. PLAINTIFF was injured, harmed and/or offended by
16 DEFENDANT WEISS' touching. Specifically, PLAINTIFF suffered by
17 invasion of her personal dignity, a lowering of her self-esteem
18 and image, mental suffering and anguish, embarrassment, and
19 humiliation all to her damage in an amount according to proof.

20 46. To the extent allowed by law, SYCUAN is vicariously
21 liable for the acts of WEISS.

22 47. DEFENDANTS committed the acts alleged herein
23 maliciously, fraudulently and oppressively, with the wrongful
24 intention of injuring PLAINTIFF, from an improper and evil motive
25 amounting to malice, and in conscious disregard of PLAINTIFF's
26 rights. PLAINTIFF is thus entitled to recover punitive damages
27 from DEFENDANTS in an amount according to proof.
28

1 WHEREFORE, PLAINTIFF requests relief as hereinafter
2 provided.

3 PRAYER

4 WHEREFORE, Plaintiff requests relief as follows:

5 1. For damages according to proof including loss of
6 earnings, deferred compensation and other employment benefits;

7 2. For compensatory damages for losses resulting from
8 embarrassment, harm to reputation, humiliation, mental anguish,
9 and other emotional distress according to proof;

10 3. For interest on the amount of losses incurred in
11 earnings, deferred compensation and other employee benefits at
12 the prevailing rates;

13 4. That Defendants, their agents, successors, employees
14 and those acting in concert, be enjoined permanently from
15 engaging in each of the unlawful practices, policies, usages and
16 customs set forth herein;

17 5. For reinstatement of Plaintiff in the position from
18 which she was wrongfully terminated or a comparable position in
19 Defendants' organization and all benefits attendant thereto that
20 would have been afforded Plaintiff but for said discrimination
21 and violations;

22 6. For liquidated damages to the extent allowed by law;

23 7. For punitive damages according to proof;

24 8. For costs of suit including reasonable attorneys fees;

25 9. For such other and further relief as the Court may deem
26 proper.

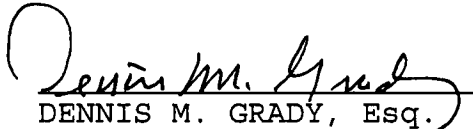
27 ///

28 ///

GRADY AND ASSOCIATES

DATED: April 6, 2010

By:

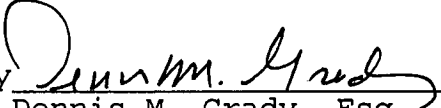

DENNIS M. GRADY, Esq.
Attorneys for Plaintiff
ELSA MANULID

REQUEST FOR JURY TRIAL

Plaintiff hereby requests a jury trial.

DATED: April 6, 2010

By


Dennis M. Grady, Esq.
Attorney for Plaintiff,
ELSA MANULID

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Elsa Manulid

(b) County of Residence of First Listed Plaintiff San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Dennis M. Grady, Grady and Associates, 3517 Camino del Rio South, #400, San Diego, CA 92108 (619) 528-2530

DEFENDANTS

Sycuan Casino, a Sycuan Band of the Kumeyaay Nation, an entity; Dr. Donald Weiss; and individual

County of Residence of First Listed Defendant: CALIFORNIA
(EXCEPT IN PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED

Attorneys (If Known)

'10 CV 0721 WQH

CAB

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☒ PTF ☒ DEF ☒ Incorporated or Principal Place of Business In This State ☐ PTF ☒ DEF ☒
- Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place of Business In Another State ☐ 5 ☐ 5
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

- (Place an "X" in One Box Only)
- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

29 C.F.R. Section 825.400 (a) (2)

Brief description of cause:
FMLA ect.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

04/06/2010

SIGNATURE OF ATTORNEY OF RECORD

Dennis M. Grady, Esq.

FOR OFFICE USE ONLY

RECEIPT #

11950

AMOUNT

\$350 -

APPLYING IFP

JUDGE

MAG. JUDGE

MB 04-06-10

Court Name: USDC California Southern
Division: 3
Receipt Number: CAS011950
Cashier ID: mbain
Transaction Date: 04/06/2010
Payer Name: GRADY AND ASSOCIATES

CIVIL FILING FEE
For: MANULID V SYCUAN CASINO
Case/Party: D-CAS-3-10-CV-000721-001
Amount: \$350.00

CHECK
Check/Money Order Num: 3718
Amt Tendered: \$350.00

Total Due: \$350.00
Total Tendered: \$350.00
Change Amt: \$0.00

There will be a fee of \$45.00
charged for any returned check.